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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,284	06/16/2005	Harald Jakob	7601/84332	2629
42798	7590	08/18/2006		
FITCH, EVEN, TABIN & FLANNERY			EXAMINER	
P. O. BOX 65973			PETRUNCIO, JOHN M	
WASHINGTON, DC 20035			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/539,284	JAKOB ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	John M. Petruncio	1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 19-39 is/are pending in the application.
  - 4a) Of the above claim(s) 32-36,38 and 39 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 19-23 and 26-31,37 is/are rejected.
- 7) Claim(s) 24 and 25 is/are objected to.
- 8) Claim(s) 19-39 are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 19-31 and 37, drawn to coated peroxygen particles, classified in class 428, subclass 403.
- II. Claims 32-36, drawn to a process for the preparation of coated peroxygen/sodium percarbonate particles, classified in class 252, subclass 186.27.
- III. Claims 38-39, drawn to a detergent composition, classified in class 510, subclass 375.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process than the spraying required by II.

Inventions I and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP §

806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination is limited to a specific peroxygen.. The subcombination has separate utility such as use in oxidation syntheses..

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

During a telephone conversation with Michael A. Sanzo, Esq. on june 9, 2006, a provisional election was made with traverse to prosecute the invention of Group I, claims 19-31 and 37. Affirmation of this election must be made by applicant in replying to this Office action. Claims 32-36 and 38-39 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 19-23, 26-31 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. 5,902,682 to Bertsch-Frank et al.alone or further in view of EP 0 623 553 to Kokubo et al.

The Bertsch-Frank et al '682 reference relates to coated sodium percarbonate particles wherein the coating generally constitutes from 0.5 to 25 wt.% of the sodium carbonate (col. 3, line 7 et seq) wherein the coating may be multi-layered, preferably two or three-layered (col. 3, line 49 et seq). This reference discloses that coated particles with a layered structure in the sequence, from inside to outside, of magnesium sulfate, sodium carbonate, sodium silicates, wherein these substances may be partially hydrated, exhibit exceptional storage-stability (col. 4, line 28 et seq; see also Table 4). The sodium carbonate and/or hydrates of the same is present in an amount of 0.2 to 10wt% and the sodium silicates and/or hydrates of the same with a molar ratio of SiO<sub>2</sub> to Na<sub>2</sub>O of 4 to 1 to 1 to 1 in an amount of 0 to 5 wt. %, preferably 0.2 to 3 wt % calculated hydrate-free with reference to the core of sodium percarbonate (col. 4, line 36 et seq). In this context see also col. 5, lines 5-20 and col. 6, lines 8-20. This reference further discloses that sodium silicates are preferably used in the form of a waterglass solution (35 to 40 degree Baume) which contains Si O<sub>2</sub> and Na<sub>2</sub>O in a molar ratio of about 3.5 to 1 (col. 6, line 33 et seq).

To the extent that this primary reference does not appear to explicitly refer to the outer layer of 0.2 to 3 wt% of the coated particle having been prepared using an aqueous solution comprising 2-20 wt% alkali metal silicate, at the time of the invention one skilled in the art also having the benefit of the Kokubo et al '553 reference's teaching of the use of silicate as the coating agent in the form of water-glass No.1, No. 2, or No. 3 etc in various coating amounts, preferably 0.01 mole to 0.06 mole based on SiO<sub>2</sub> per mole of uncoated sodium percarbonate... 0.3 parts to 2.2 parts based on SiO<sub>2</sub>

per 100 parts of sodium percarbonate ..which affects stability and solubility rates of the coated percarbonate particles (p. 3, lines 28-39), would have found it obvious to modify the primary reference's teaching re silicate concentration in view of the Kokubo et al teachings as referred to obtain the shell layers called for. No evidence of surprising and unexpected results is immediately apparent over the teachings of these references. No claim stands allowed.

***Allowable Subject Matter***

Claims 24-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John M. Petruncio whose telephone number is 571-272-1323. The examiner can normally be reached on 10:30Am-7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John M. Petruncio  
June 26, 2006

*Douglas McGinty*  
DOUGLAS MCGINTY  
SUPERVISORY PATENT EXAMINER

1751